IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITON NO.4657 OF 2005

Pravin Himatlal Meghani .. Petitioner

v/s.

Fatima Husseni Radhanpurwala
& ors. .. Respondents

Mr.Jimmy Mehta i/by Mr.H.G.Bhambhani for the petitioner.

Ms.J.P.Thakkar for the respondent No.1.

Mr.J.S.Kini for the respondent No.2.

Mr.A.K.Trivedi for the respondent No.3.

ALONGWITH

WRIT PETITION NO.6743 OF 2005

Anwar Usman Moulavi .. Petitioner

v/s.

Pravin H. Meghani & ors. .. Respondents

Mr.J.S.Kini for the petitioner.

Mr.Jimmy Mehta with Mr.H.G.Bhambhani for the respondents.

CORAM : SMT.NISHITA MHATRE, J.

DATED : 5th October, 2005

P.C.

Petition No.4657 of 2005 has been filed by the plaintiff seeking his appointment as agent of the Court Receiver. The Court Receiver was appointed by an order of the Small Causes Court in the year 2003. This order was challenged by the

petitioner by filing an appeal being appeal No.117 of 2003 from Interim Notice No.4877 of 2002 in R.A.D./E.Suit No.1155/1905 of 2002. The appellate court dismissed the appeal filed by the petitioner and held that the direction of the trial court to appoint the defendant No.2 as agent of the Court Receiver need not be disturbed. The appellate court has given reasons for not disturbing the order passed by trial court. The petitioner had filed the suit for recovery of possession in the year 2002. According to the prima facie finding of the court, the defendant No.2 was in possession of the suit premises since 2000 and he claimed to be the tenant. The question as to whether the defendant was, in fact, a tenant or not, is a question which is being decided by the trial court. The petitioner has alleged that the tenancy is claimed on the basis of the several fabricated documents.

2. The appellate court after considering all the facts has concluded that it would not be appropriate to appoint the petitioner as agent of the Court Receiver since the defendant No.2 has been in possession of the suit premises from the year 2000.

3. The interim notice being interim notice No.660 of 2005 has been taken out by the petitioner alleging that there was a contempt of the order

passed by the trial court to maintain status-quo and not to induct any third party. The trial court by its order dated 16th March, 2005 has found that prima facie contempt has been committed by defendant No.2. The trial court has referred the matter to this court to take cognizance under Rule 18 of the Contempts of Courts (Bombay High Court) Rules 1975. This contempt petition is pending adjudication in this court.

4. The petitioner complains that despite the prima facie finding that defendant No.2 has committed contempt, the trial court in interim notice No.660 of 2005 has not modified its earlier order and has allowed defendant No.2 to continue as agent of the Court Receiver.

5. The learned counsel for the petitioner submits that when there is prima facie evidence that defendant No.2 is doing business in 12 cabins constructed in the suit premises, he should not be allowed to continue in those premises as agent of the Court Receiver. It is submitted that this would mean that the defendant who has been found guilty of contempt, prima facie, would be allowed to flout the earlier orders of maintaining status-quo. In these circumstances, the learned counsel submits that it would be more appropriate to appoint the petitioner as agent of the Court Receiver during pendency of the trial court.

6. There is no dispute that the trial has been expedited and is, in fact, in progress. The matter is being heard at least once every week. By an earlier order, the trial court was directed to dispose of the trial by 30th September, 2005. The trial has not progressed as required as only the plaintiff's testimony has been recorded.

7. Mr.Kini, learned advocate for the defendant No.2 submits that the defendant No.2 has all along been in possession of the suit premises. He is a tenant of the same. Unless the petitioner is able to prove his case that defendant No.2 has come into possession of the suit premises illegally, he cannot be ousted from the premises. He further submits that the 12 cabins which are in possession of the defendant No.2 have been allotted by him to his commission agents. He submits that the appellate court's order is a well reasoned order and therefore, there is no need to interfere with the same at this stage when the trial court is in progress. In the event it is held that the defendant No.2 is in unlawful possession, the trial court will necessarily pass appropriate orders. He submits that there is no need to disturb the findings of the trial court which have been confirmed by the appellate court.

8. Writ petition NO.6743 of 2005 has been filed by

defendant No.2 challenging the order of the trial court passed in interim notice No.660 of 2005. This order has been challenged specifically on the ground that the plaintiff in writ petition No.4657 of 2005 has sought his appointment as agent of the Court Receiver only on account of the prima facie findings arrived at by the trial court in the contempt notice.

9. Having heard the learned counsel for the parties, in my view, it would be appropriate to dispose of both the writ petitions at this stage of admission itself.

10. There can be no dispute that there is an order of the trial court in the interim notice No.660 of 2005 holding prima facie that the case of contempt has been made out against the defendant No.2. Accordingly, the trial court has referred the matter to this court. The Division Bench of this court which is seized of the reference will decide whether in fact, the defendant No.2 has committed contempt of court. Therefore, it would not be appropriate on my part to entertain writ petition No.6743 of 2005 filed by the defendant No.2.

11. As regards the writ petition No.4657 of 2005, I am of the view that no case has been made out to interfere with the order of the trial court and the appellate court at this stage. There is no doubt

that prima facie, it has been found that the defendant No.2 has committed contempt. However, appropriate action has been taken in that regard by this court by entertaining the reference made by the trial court.. The plaintiff has challenged the order in interim notice No.660 of 2005 to the extent that the trial court has refused to appoint the plaintiff as the agent of the Court Receiver in respect of the suit premises despite the finding that there is a prima facie case of contempt made out against defendant No.2.

12. Although such a prima facie finding has been arrived at by the trial court, in my view, it would not be appropriate to disturb the position where defendant No.2 has been appointed as agent of the Court Receiver. This is because the suit is already pending trial. Witnesses are being examined and the matter is being heard every week. The defendant No.2 has ben in possession of the suit premises since the year 2000. It would, therefore, be inequitable to take physical possession of the suit premises at this stage. In the event it is held that the defendant No.2 is guilty of contempt, appropriate orders would follow. Furthermore, the trial court has to assess whether defendant No.2 is in possession of the suit premises. In the event if it finds that the defendant No.2 is in unlawful possession of the suit premises, the trial court can always pass an

appropriate order at that stage. Therefore, in my view, there is no need to disturb the order of the appellate court. Petition rejected.

13. The trial court is requested to dispose of the suit as expeditiously as possible and in any event by 31st March, 2006.

(SMT.NISHITA MHATRE, J.)